

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

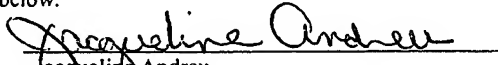
PATENT

In re Application of: Eric Bornstein
Serial No: 10/821,442
Filing Date: 09 April 2004
Title: INSTRUMENT FOR DELIVERY OF OPTICAL ENERGY TO THE
DENTAL ROOT CANAL SYSTEM FOR HIDDEN BACTERIAL AND
LIVE BIOFILM THERMOLYSIS
Art Unit: 3732
Examiner: Lewis, Ralph A.
Confirmation No. 1341
Docket No: 72287-015

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope address, facsimile transmitted, or electronically submitted via EFS-Web to: Mail Stop Issue Fee, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Date: June 19, 2008


Jacqueline Andreu

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 35 U.S.C. § 154(b) and 37 CFR § 1.705(b)**

Dear Sir:

Pursuant to 35 U.S.C. § 154(b) and 37 CFR § 1.705(b), Applicant respectfully submits this application for patent term adjustment for the subject application.

Authorization is hereby given to charge our deposit account number, No. 50-1133, the required fee set forth in 37 CFR § 1.18(e).

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Statement of Facts:

A. Relevant Circumstances of Prosecution

The following is a brief summary of the circumstances relevant to determination of patent term adjustment for the subject application:

1. On 29 January 2007, Applicant filed with the Office a proper Request for Continued Examination under 37 CFR § 1.114 (“RCE”);

2. On 19 April 2007, the Office mailed a Notice of Allowance/Allowability and Fees Due to Applicant’s attorneys, however the correspondence was addressed to an incorrect address;

3. The subject application went abandoned after midnight 19 July 2007;

4. On 10 August 2007, the Office mailed a Supplemental Notice of Allowance, again to an incorrect address;

5. The Office mailed a Notice of Abandonment on 22 October 2007, again to an incorrect address;

6. Applicant’s attorney filed a Petition under 37 CFR § 1.181 to withdraw the holding of abandonment for non-receipt of the above-referenced Notices of Allowance/Allowability and Fees Due;

7. On 24 March 2008, the Office issued a decision granting Applicant’s Petition under 37 CFR § 1.181 to withdraw the holding of abandonment, stating among other things: **“Clearly, then, the Office mailed the 19 April, 2007, Notice of Allowance/Allowability, the 10 August, 2007 Supplemental Notice of Allowance, and the 22 October, 2007, Notice of Abandonment to the wrong address.”** [Emphasis in original]; and

8. On 28 May 2008, the Office re-mailed the Notice of Allowance and Fees Due of 19 April 2007 for the subject application, this time to the correct address for Applicant’s attorneys.

B. Patent Term Adjustment Calculation

For the subject application, Applicant submits that the correct patent term adjustment under 37 CFR § 1.702 for the patent term adjustment is 154 days. The basis or bases for this patent term adjustment under 37 CFR § 1.702 are described in the following remarks.

The adjustment to the patent term requested herein is calculated as the period from 30 May 2007, representing the day after the last day of the four month period under 35 U.S.C. § 154 within which the Office could and should have properly responded to the Applicant's RCE of 29 January 2007, through 28 May 2008, i.e., the day the Office re-mailed the Notice of Allowance; this period totals 364 days. This period is reduced under 37 CFR § 1.704 by the cumulative period of time accrued by Applicant during prosecution, consisting of extensions of time totaling seven months or 210 days (7 times 30 days) and described in further detail below. The resulting adjustment, therefore, is equal to 154 days.

The calculation of the patent term adjustment is based on the four months as the permissible time period, under 35 U.S.C. § 154, within which the Office should have (but failed to) properly respond to Applicant's RCE filed for the subject application on 29 January 2007. The end date of the time period is the date on which the Office mailed Notice of Allowance and Fees Due, i.e., 28 May 2008.

The relevant dates as specified in 37 CFR §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled include the following (additional dates are set forth, *supra*):

- 29 January 2007, the date Applicant submitted a proper RCE under 37 CFR § 1.114 for the subject application; and
- 28 May 2008, the date the Office mailed a properly addressed Notice of Allowance for the subject application to Applicant's attorneys.

The subject patent application and ensuing patent are not subject to a terminal disclaimer.

As for any circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in 37 CFR § 1.704, Applicant notes that petitions for extensions of time in the total of seven (7) months were requested during the prosecution of the subject application: (i) a Petition for Extension of Time in the amount of three (3) months was submitted on 03 November 2005; (ii) a Petition for Extension of Time in the amount of three (3) months was submitted on 24 July 2006; and, (iii) a Petition for Extension of Time in the amount of one (1) month was submitted 29 January 2007.

Conclusion

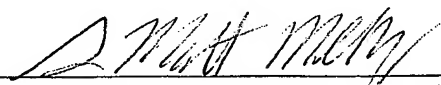
For the foregoing reasons, Applicant respectfully submits that the term of the patent resulting from the subject application should be adjusted by 154 days, and requests that the Office accordingly make such an adjustment to the term of the patent.

The Commissioner is hereby authorized to charge any fees that are required for the subject application, including any fees under 37 CFR § 1.18(e) required for the submission of this application for patent term adjustment, or credit any overpayment, to Deposit Account No. 50-1133.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

Date: 19 June 2008


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